IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of:	) Date: June 28, 2011
Bradley R. HAMMELL	) Attorney Docket No.: F-759-P1
Serial No.: 10/580,484	) Customer No.: 00919
Filed: May 24, 2006	) Group Art Unit: 3687
Confirmation No.: 2385	) Examiner: Iwarere, O.

Title: Method for Providing a Shortcut to Shipping Information

Mail Stop Appeal Brief- Patents
Commissioner for Patents
Alexandria, VA 22313-1450

APPELLANT'S BRIEF ON APPEAL

Sir:

This is an appeal pursuant to 35 U.S.C. § 134 and 37 C.F.R. §§ 41.31 et seq. from the final rejection of claims 1-5, 13-17 and 22 - 26 of the above-identified application mailed October 28, 2010. This Brief is in furtherance of the Notice of Appeal transmitted in this case on January 28, 2011. Appellant hereby petitions for a three month extension of time to respond and submit the required fee herewith. Accordingly, this brief is timely filed. The fee for submitting this Brief is $540.00 and the fee is submitted herewith. The Commissioner is hereby authorized to charge any additional fees that may be required for this appeal or to make this brief timely or credit any overpayment to Deposit Account No. **16-1885**.

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I. Real Party in Interest

The real party in interest in this appeal is Pitney Bowes Inc., a Delaware corporation, the assignee of this application.

II. Related Appeals and Interferences

In parent application 10/722,231, the December 20, 2010 Decision of the BPAI Affirmed-in-part and Reversed-in-part the final rejection in the application. Appellants' assignee has filed a Request for Continued Examination in that application. A copy of the Decision is attached.

There are no pending appeals or interferences known to Appellant, his legal representative, or the assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-5, 13-17 and 22 - 26 are in the case and under final rejection of the Examiner.

Claims 6-12 were withdrawn from consideration by the Examiner.

Claims 6-12 and 18-21 have been canceled.

Claims 1-5, 13-17 and 21-26 are in the case and stand finally rejected under 35 U.S.C. § 103(a) as allegedly rendered obvious by U.S. Patent No. 7,212,829 B1 to Lau, et al. ("Lau '829") in view of alleged Official Notice.

Appellants hereby appeal the final rejection of claims 1-5, 13-17 and 21-26.

IV. Status of Amendments

There are no amendments to the claims filed subsequently to the Final Office Action of October 28, 2010. Therefore, the claims set forth in Appendix A to this brief are those as set forth before the final rejection.

V. Summary of Claimed Subject Matter

Appellant's invention as presently claimed relates generally to status inquiries regarding delivery of shipments. People who use delivery companies with online access usually track and confirm delivery of packages by remembering a unique--and usually difficult to remember--tracking identifier. Such a tracking code is normally a string of letters and/or numbers that have no easily remembered meaning. According to a second alternative method, the user must go through a time-consuming authentication process in order to access the tracking identifier. Either of these two methods has drawbacks.

The present illustrative process is as convenient as activating a script or executable file, in order for a user to check and verify shipping status. For instance, at the time of a transaction, the company (i.e. a merchant, carrier, or related business) will formulate a small html page that is capable of redirecting the user to the carrier's web site with the query and tracking identifier already entered. The user is then given the option to save this small html page on the user's desktop or other local storage area. From then on, the user just double clicks that html file, and current shipping information is displayed without any need for memorizing a tracking identifier or authenticating.

An illustrative embodiment of the application is well-suited to a situation in which a user is tracking more than one shipment, either using a single carrier or a plurality of carriers. In the latter case, at least some shipping data is aggregated so that a user is able to quickly and easily access shipping status from two or more carriers.

When a user clicks on a desktop icon or other hyperlink, the user is not only provided delivery status, but is also provided with the opportunity to have delivery status updated. For example, a carrier will already typically update delivery status when the package arrives at a discrete set of points A, B, C, D, and E. The illustrative embodiment of the application allows the user to find out where the item is between, for example, points A and B or between points B and C. This is accomplished, for example, by having GPS units on vehicles. Advantageously, the user is provided one free access to the system, and then has to pay for further clicks in order to get this deluxe pinpoint

tracking information within a certain time of clicking the icon or hyperlink. See Specification at ¶¶ 0001-0007.

Several illustrative embodiments are presented. As shown in FIG. 1, a user is provided 100 with a shipping pinpoint symbol and a shipping checkpoint symbol. These may be icons on the user's desktop. The user decides 105 whether checkpoint status is adequate or whether more precise pinpoint information is required. If checkpoint status is sufficient, then the user clicks 110 on the checkpoint symbol. If the user is not connected 112 to the internet, then a connection is established 115. When the connection is in place, a checkpoint inquiry is sent 117 to the shipping carrier, and the carrier provides a checkpoint location to the user. Subsequently, the user is able to repeat this procedure. If, at step 105, the user decides that more precise shipping status is desired, then the user clicks 121 on the shipment pinpoint symbol. In response to that inquiry, the carrier ascertains 129 a pinpoint location of the shipment between checkpoints. This may be done, for example, by communicating with a delivery truck or airplane which is equipped with a global positioning satellite (GPS) device, and then the carrier can plot the GPS coordinates on a map and present 131 the map to the user.

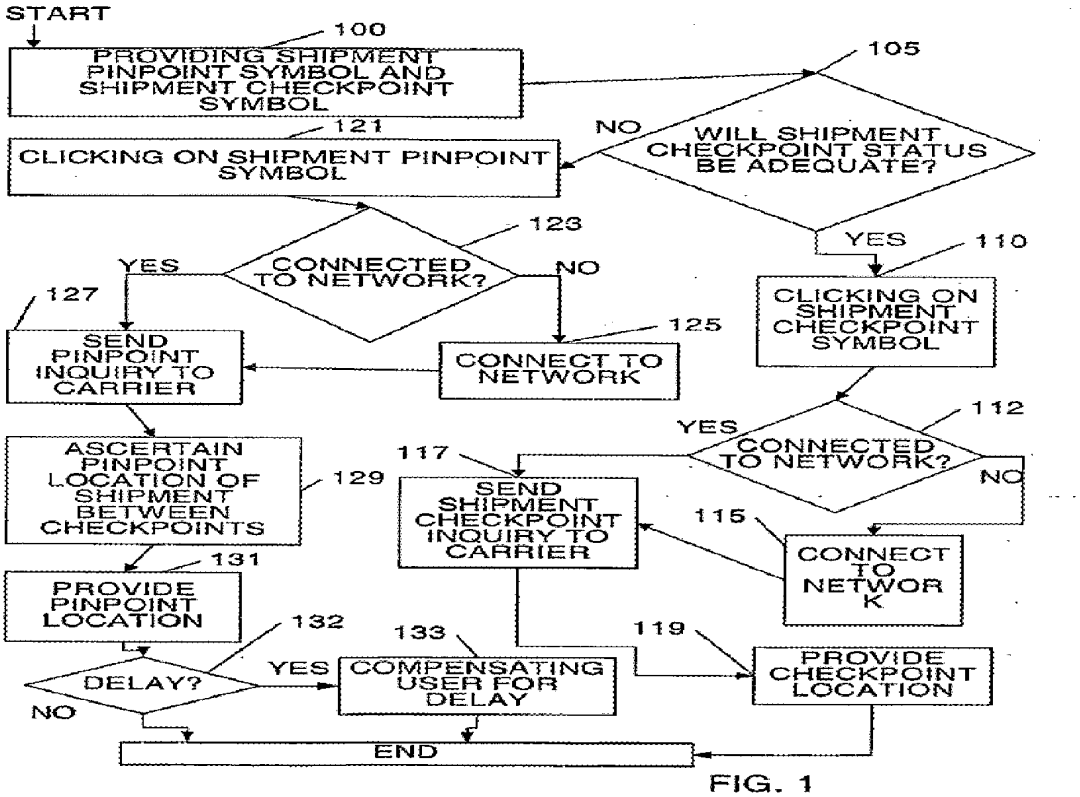

FIG. 1

See FIG. 1, Specification at ¶¶ 0012-0022.

In FIG. 3 below, a system 300 according to the present application is shown. The user's computer 310 displays a shipment pinpoint symbol 315 and a shipment checkpoint symbol 320. These symbols may be displayed at the user's desktop. In any event, the user will click on the checkpoint symbol 320 to find out the checkpoint or checkpoints at which the presence of the shipment has been detected. Or, the user will click on the pinpoint symbol 315 to actually cause the carrier to find out where the shipment (e.g. a letter, package, or any other item that can be delivered) is located between checkpoints. The carrier does this by using a shipment location tracker device 322 for contacting a delivery vehicle 324, so that the delivery vehicle will report its position between checkpoint A and checkpoint B. The delivery vehicle 324 will detect its position, for example, using a GPS unit. The shipment location tracker device 322 may be a wireless phone, radio, or other communication device. Regardless of which symbol the user clicks, the inquiry will be sent to the carrier via a network such as the internet 325, and the reply from the carrier will also be sent that way as well.

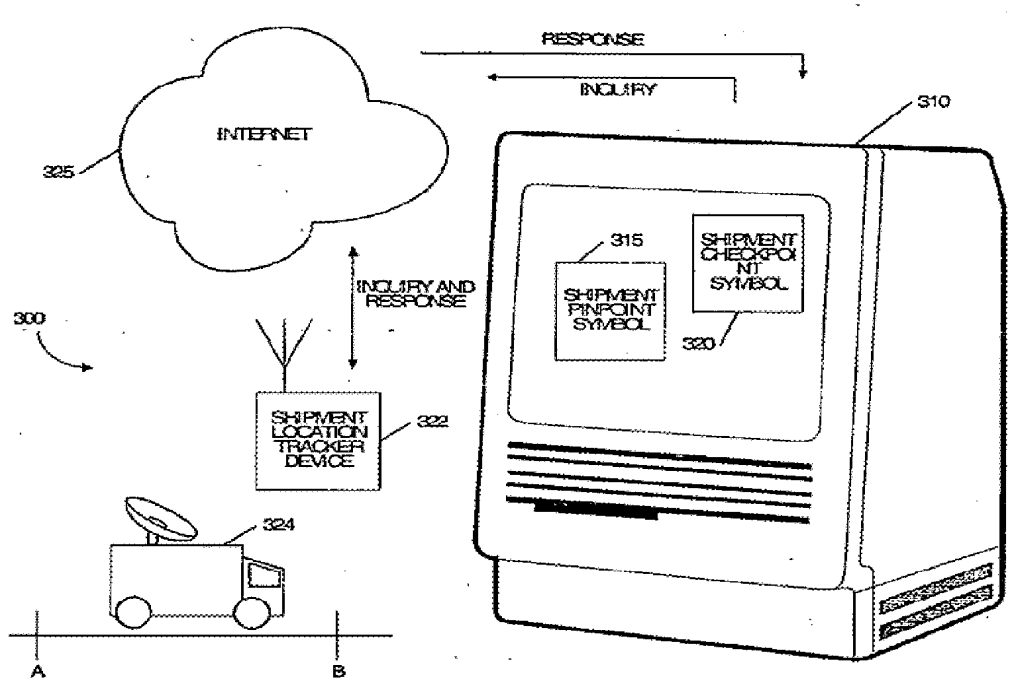

FIG. 3

The independent claims are reproduced below with merely illustrative annotations that are not intended to be comprehensive or limiting.

Independent claim 1 recites:

1. A computer implemented method for a user to find pinpoint status of a shipment being transported by a carrier, comprising (See, e.g., FIGs. 1-4, ¶¶ 0014-26):
clicking on a shipment pinpoint symbol shortcut icon (121, 315) on a computer screen (310);
connecting automatically to an internet or private network (123, 125, 325), if a connection is not already established;
then, in response to clicking on the shipment pinpoint symbol shortcut icon (121, 315), sending automatically a shipping pinpoint inquiry (127) to the carrier via the internet or private network (325);
requesting a pinpoint location of the shipment in response to the shipping status inquiry (129); and
receiving the requested pinpoint location of the shipment to the computer screen (131),
wherein the pinpoint location identifies a position between checkpoints at each of which shipment presence is monitored regardless of user inquiries.

Independent claim 13 recites:

13. A system for a user to obtain via internet or other network, a pinpoint status of a shipment being transported by a carrier, comprising (See, e.g., FIGs. 1-4, ¶¶ 0014-26);
a server computer for providing to a user computer a clickable shipment pinpoint symbol shortcut icon file (315) that triggers a shipping pinpoint inquiry to a carrier; and
a shipping location tracker device (322), responsive to the shipping pinpoint inquiry, for providing the pinpoint status to the user computer via the internet or private network;
wherein the pinpoint status identifies a position (324) between two checkpoints at each of which shipment presence is monitored regardless of user inquiries.

Independent claim 25 recites:

25. A system for a user to obtain via a network tracking status information for a shipment being transported by a carrier including at least

one of a pinpoint status and a checkpoint status, comprising (See, e.g., FIGs. 1-4, ¶¶ 0014-26);

a server computer for providing to a user computer a clickable shipment pinpoint symbol shortcut icon file (315) that triggers a pinpoint tracking status inquiry for the shipment to a carrier; and a clickable shipment checkpoint symbol shortcut icon file (320) that triggers a checkpoint tracking status inquiry for the shipment to the carrier; and

a shipment tracking device (322) operatively connected to the server computer, the server computer using the shipment tracking device to provide the pinpoint status to the user computer via the network in response to the user selecting the clickable shipment pinpoint symbol shortcut icon file and to provide the checkpoint status to the user computer via the network in response to the user selecting the clickable shipment checkpoint symbol shortcut icon file,

wherein the pinpoint status identifies a position (324) between two checkpoints at each of which shipment presence is monitored regardless of user inquiries.

Additional features of the invention are discussed below in the Argument section of this Brief. This summary is not intended to supplant the description of the claimed subject matter as provided in the claims as recited in Appendix A, as understood in light of the entire specification.

VI. Grounds of Rejection to Be Reviewed on Appeal

A Whether Claims 1-5, 13-17 and 21-26 are unpatentable under 35 U.S.C. § 103(a) as allegedly rendered obvious by U.S. Patent No. 7,212,829 B1 to Lau, et al. ("Lau '829") in view of alleged Official Notice.

VII. Argument

As discussed in detail below, Appellants respectfully submit that the final rejection of claims 1-5, 13-17 and 21-26 does not meet the threshold burden of presenting a prima facie case of unpatentability. Accordingly, Appellants are entitled to grant of those claims. In re Oetiker, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

A Claims 1-5, 13-17 and 21-26 are not Unpatentable under 35 U.S.C. § 103(a)

Claims 1-5, 13-17 and 21-26 are in the case and stand finally rejected under 35 U.S.C. § 103(a) as allegedly rendered obvious by U.S. Patent No. 7,212,829 B1 to Lau, et al. ("Lau '829") in view of alleged Official Notice.

Appellant respectfully disagrees with the rejection and urge its reversal for at least the reasons stated below.

In rejecting a claim under 35 U.S.C. §103, the Examiner is charged with the initial burden for providing a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 375 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970). The Examiner is also required to explain how and why one having ordinary skill in the art would have been led to modify an applied reference and/or combine applied references to arrive at the claimed invention. *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995); *In re Deuel*, 51 F.3d 1552, 34 USPQ 1210 (Fed. Cir. 1995); *In re Fritch*, 972 F.2d 1260, 23 USPQ 1780 (Fed. Cir. 1992); *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. ___ , 127 S.Ct. 1727, 1735 (2007) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* (quoting Kahn, 441 F.3d at 988)). *See also*, *Takeda Chem. Indus., Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350, 1357 (Fed. Cir. 2007) (To avoid improper use of hindsight, the Examiner must articulate "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" in an obviousness determination. (quoting *KSR*, 127 S. Ct. at 1731)).

See also, In re Kahn, 441 F.3d 977 (Fed. Cir. 2006)(Most inventions arise from a combination of old elements and each element may often be found in the prior art. However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole). Additionally, if the references

when combined suggest an inoperative device, the Examiner may not use the references to establish a prima facie rejection. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339 (Fed. Cir. 2001)(if references taken in combination would produce a "seemingly inoperative device," then such references teach away from the combination and cannot serve as predicates for a prima facie case of obviousness). Moreover, here, the cited references expressly teach away from the combination urged by the examiner and thus the combination is improper. *See e.g.*, MPEP 2145 X.D, *citing In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983).

Initially, Appellant respectfully submits that the use of Official Notice for the first time in a Final Office Action is improper. Moreover, Appellant disputes the statement of Official Notice on Page 3 of the Final Office Action stating "The Examiner takes Official Notice that it is old and well known in the art of websites to include shortcut icons and to click those icons as a way to make a selection." Appellants dispute the statement at least because it is not clear what is meant by websites including and clicking icons as a way to make a selection. Appellant respectfully requests a reference to support the statement. Appellant respectfully disputes any combination of the alleged material taken by Official Notice. In relying on Official Notice, the MPEP instructs that only "notorious" facts used to "fill the gaps" in dependent claims is appropriate and its use should be rare at final rejection or later. See MPEP 2144.03. Contrary to the Examiner's suggestion, it would not have been obvious to include clicking on a pinpoint symbol as described more fully below, at least because Lau '829 deals only with setting up future notifications that arrive by email, pager or facsimile. See Lau '829 at FIG. 6.

Accordingly, Appellant has adequately disputed the notice and thus, the Examiner has failed to establish a prima facie rejection. Appellant respectfully submits that for such reason alone, the rejection should be reversed.

Initially, the Lau '829 reference teaches away from the combination because the Lau '829 network interactive notification screen is to setup automated notifications, not for requesting individual status requests. See FIG. 6 below and Col. 10, lines 3-16.

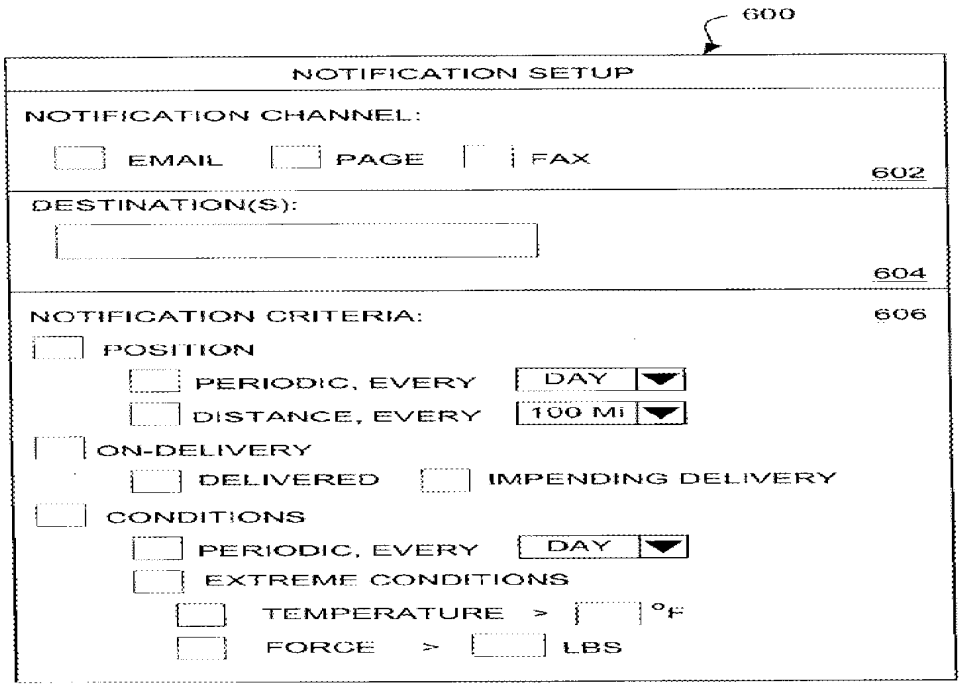

FIG. 6

Accordingly, contrary to the assertion at page 3 of the Final Office Action, one of skill in the art would not make the combination suggested as it would be seemingly inoperable. The Lau '829 system appears to describe a "push" system of automatic notifications through email, pagers and facsimiles based upon the criteria entered and not a pull system.

Independent claim 1 recites:

1. A computer implemented method for a user to find pinpoint status of a shipment being transported by a carrier, comprising:

clicking on a shipment pinpoint symbol shortcut icon on a computer screen;

connecting automatically to an internet or private network, if a connection is not already established;

then, in response to clicking on the shipment pinpoint symbol shortcut icon, sending automatically a shipping pinpoint inquiry to the carrier via the internet or private network;

requesting a pinpoint location of the shipment in response to the shipping status inquiry; and

receiving the requested pinpoint location of the shipment to the computer screen,

wherein the pinpoint location identifies a position between checkpoints at each of which shipment presence is monitored regardless of user inquiries.

On page 2 of the Final Office Action, the Examiner cites to Lau '829 col. 5, lines 53-62 for user selection. However, the cited portion of Lau '829 appears to describe only interactive web notification setup for automated future notifications by email, etc., rather than an immediate interactive web pinpoint location request. See, e.g., FIG. 6 above.

Moreover, on page 2 of the Final Office Action, the Examiner suggests that Lau '829, col. 4, lines 37-50 teach connecting to the network as claimed. However, the cited portion of the reference appears to describe only connectivity for the tracking devices and not the status requesting device.

Similarly, on page 3 of the Office Action, the Examiner cites to Lau '829 col. 4, lines 55-67 to purportedly teach i) sending a shipping pinpoint inquiry, ii) requesting a pinpoint location and iii) receiving the requested pinpoint location on the computer screen. However, the cited portion of the reference appears to describe only a system that pushes data from its sensors. It does not teach or suggest clicking an icon to obtain pinpoint tracking information on the screen of the computer where the icon was selected.

Independent claims 13 and 25 were addressed simultaneously with claim 1 in the Final Office Action. Claims 13 and 15 contain at least some similar limitations as claim 1 and are patentable over the cited reference for at least the same reasons.

Therefore, Appellant respectfully submits that the Examiner has failed to establish a prima facie rejection. Accordingly, Appellant respectfully submits that the rejection is in error.

With regard to dependent claims 2 and 14, the Examiner suggests at page 4 of the Final Office Action that Lau '829 FIG. 6 depicts icons and thus teaches: "wherein the shipment pinpoint symbol shortcut icon comprises a file, including a markup language content text including a tracking code of the shipment." Initially, FIG. 6 is reproduced

above and does not depict icons. Moreover, even if it did, it would not be used for initiating tracking, but rather to setup future automated notifications. Accordingly, Appellant respectfully submits that the rejection is in error.

Similarly, with regard to dependent claims 3 and 15, the Examiner suggests at page 4 of the Final Office Action that Lau '829 FIG. 6 depicts icons and thus teaches: ", wherein the shipment pinpoint symbol shortcut icon is provided to the computer screen in conjunction with a shipment checkpoint symbol shortcut icon, and wherein the shipment checkpoint symbol shortcut icon is for obtaining information as to the presence of at least one of the checkpoints." Initially, FIG. 6 is reproduced above and does not depict icons. Moreover, even if it did, it would not be used for initiating tracking, but rather to setup future automated notifications. Accordingly, Appellant respectfully submits that the rejection is in error.

With regard to claim 4, the Examiner states that Lau '829 at col. 11, lines 52-62 discusses costs. However, the cited portion of Lau '829 discusses costs for the shipment, not costs for the status request. Accordingly, Appellant respectfully submits that the rejection is in error.

Dependent claim 17 currently recites:

17. The method of claim 2, further comprising:
determining that the position indicates arrival at a delivery checkpoint; and
modifying the file to remove the tracking code of the shipment.

The Examiner suggests at pages 4-5 that FIG. 3 depicts "updating shipping information." However, FIG. 3 does not appear to teach or fairly suggest modifying tracking related information at all and not removing a tracking code. Accordingly, Appellant respectfully submits that the rejection is in error.

With regard to claim 21, the Examiner suggests that Lau '829 discusses the Internet at col. 2. However, claim 21 recites:

> The method of claim 2, further comprising:
> receiving the shortcut icon file via the internet or private network

The cited portion of Lau '829 does not appear to describe receiving a shortcut icon file at all. Similarly, the elements of claim 22 are not met by the cited portion of Lau '829. Accordingly, Appellant respectfully submits that the rejection is in error.

With regard to claims 23 and 24, the cited FIG. 1 of Lau '829 does not appear to describe pinpoint shipment shortcut icons at all. Accordingly, Appellant respectfully submits that the rejection is in error.

With regard to claim 26, the Examiner states that Lau '829 at col. 11, lines 52-62 discusses costs. However, the cited portion of Lau '829 discusses costs for the shipment, not costs for the status request. Accordingly, Appellant respectfully submits that the rejection is in error.

The additional rejected dependent claims are patentable for at least the same reasons described herein with reference to the associated independent claim and any intervening claims.

Accordingly, Appellant respectfully submits that the Examiner has not established a prima facie rejection.

Accordingly, Appellant respectfully submits that the rejection is clearly in error and should be reversed.

IX. Conclusion

In Conclusion, Appellant respectfully submits that the final rejection of claims 1-5, 13-17 and 21-26 is in error for at least the reasons given above and should, therefore, be reversed.

Respectfully submitted on behalf of Appellant,

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VIII – CLAIMS APPENDIX
APPENDIX A

1. A computer implemented method for a user to find pinpoint status of a shipment being transported by a carrier, comprising:

clicking on a shipment pinpoint symbol shortcut icon on a computer screen;

connecting automatically to an internet or private network, if a connection is not already established;

then, in response to clicking on the shipment pinpoint symbol shortcut icon, sending automatically a shipping pinpoint inquiry to the carrier via the internet or private network;

requesting a pinpoint location of the shipment in response to the shipping status inquiry; and

receiving the requested pinpoint location of the shipment to the computer screen,

wherein the pinpoint location identifies a position between checkpoints at each of which shipment presence is monitored regardless of user inquiries.

2. The method of claim 1, wherein the shipment pinpoint symbol shortcut icon comprises a file, including a markup language content text including a tracking code of the shipment.

3. The method of claim 1, wherein the shipment pinpoint symbol shortcut icon is provided to the computer screen in conjunction with a shipment checkpoint symbol shortcut icon, and

wherein the shipment checkpoint symbol shortcut icon is for obtaining information as to the presence of at least one of the checkpoints.

4. The method of claim 1, further comprising:

determining whether the step of providing the pinpoint shipping status information to the computer screen is performed later than a certain time after the step of sending automatically the shipping pinpoint inquiry, due to a delay, and

compensating a user of the computer screen for any such delay.

5. The method of claim 1, wherein the position is separate from all of the checkpoints.

13. A system for a user to obtain via internet or other network, a pinpoint status of a shipment being transported by a carrier, comprising;

a server computer for providing to a user computer a clickable shipment pinpoint symbol shortcut icon file that triggers a shipping pinpoint inquiry to a carrier; and

a shipping location tracker device, responsive to the shipping pinpoint inquiry, for providing the pinpoint status to the user computer via the internet or private network;

wherein the pinpoint status identifies a position between two checkpoints at each of which shipment presence is monitored regardless of user inquiries.

14. The system of claim 13, wherein the shipment pinpoint symbol shortcut icon comprises a file including, a markup language content text including a tracking code of the shipment.

15. The system of claim 13, wherein the shipment pinpoint symbol shortcut icon is provided to the computer screen in conjunction with a shipment checkpoint symbol shortcut icon, and

wherein the shipment checkpoint symbol shortcut icon is for obtaining information as to the presence of at least one of the checkpoints.

16. The system of claim 13, wherein the position is separate from all of the checkpoints.

17. The method of claim 2, further comprising:

determining that the position indicates arrival at a delivery checkpoint; and

modifying the file to remove the tracking code of the shipment.

21. The method of claim 2, further comprising:

receiving the shortcut icon file via the internet or private network.

22. The system of claim 14, wherein:

the server computer sends the shortcut icon file to the user computer via the internet or private network.

23. The method of claim 2, further comprising:

then, in response to clicking on the shipment pinpoint symbol shortcut icon, sending automatically a second shipping pinpoint inquiry to a second carrier via the internet or private network;

24. The system of claim 14, further comprising:

a second server computer for providing to a user computer a clickable shipment pinpoint symbol shortcut icon file that triggers a shipping pinpoint inquiry to a second carrier.

25. A system for a user to obtain via a network tracking status information for a shipment being transported by a carrier including at least one of a pinpoint status and a checkpoint status, comprising;

a server computer for providing to a user computer a clickable shipment pinpoint symbol shortcut icon file that triggers a pinpoint tracking status inquiry for the shipment to a carrier; and a clickable shipment checkpoint symbol shortcut icon file that triggers a checkpoint tracking status inquiry for the shipment to the carrier; and

a shipment tracking device operatively connected to the server computer, the server computer using the shipment tracking device to provide the pinpoint status to the user computer via the network in response to the user selecting the clickable shipment pinpoint symbol shortcut icon file and to provide the checkpoint status to the user

computer via the network in response to the user selecting the clickable shipment checkpoint symbol shortcut icon file,

wherein the pinpoint status identifies a position between two checkpoints at each of which shipment presence is monitored regardless of user inquiries.

26. The system of claim 25, further comprising:

the server computer configured to charge the user a fee is the clickable shipment pinpoint symbol shortcut icon file is selected by the user.

Appendix IX – Evidence Appendix

None

Appendix X – Related Proceedings Appendix

In parent application 10/722,231, the December 20, 2010 Decision of the BPAI Affirmed-in-part and Reversed-in-part the final rejection (10 pages).

UNITED STATES PATENT AND TRADEMARK OFFICE

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10/722,231	11/25/2003	Bradley R. Hammell	F-759	6693

919 7590 12/20/2010

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRADLEY R. HAMMELL

Appeal 2009-006886
Application 10/722,231
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE[2]

Bradley R. Hammell (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-20, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of providing status inquiries regarding delivery of shipments (Specification 1:¶ 0001).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

> 1. A method for a user to find pinpoint status of a shipment being transported by a carrier, comprising the steps of:
>
> [1] clicking on a shipment pinpoint symbol on a computer screen;
>
> [2] connecting automatically to an internet or private network, if a connection is not already established;
>
> [3] sending automatically a shipping pinpoint inquiry to the carrier via the internet or private network;

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[2] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed September 2, 2008) and the Examiner's Answer ("Ans.," mailed October 17, 2008).

> [4] requesting a pinpoint location of the shipment in response to the shipping status inquiry; and
>
> [5] receiving the requested pinpoint location of the shipment to the computer screen,
>
> [6] wherein the pinpoint location identifies a position between checkpoints at each of which shipment presence is monitored regardless of user inquiries.

The Examiner relies upon the following prior art:

Williams	US 2002/0032573 A1	Mar. 14, 2002
Bednarek	US 6,965,868 B1	Nov. 15, 2005

Claims 1-3 and 5-20 stand rejected under 35 U.S.C. § 102(b) as anticipated by Williams.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Williams and Bednarek.

ISSUES

The issues are whether Williams describes retrieving geographic pinpoint data and whether Williams describes various limitations in claims 6, 11, 19, and 20.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. Pinpoint status means any shipment status that provides greater accuracy than checkpoint status. The checkpoint status comprises

information as to whether a shipment has reached or been scanned at one or more discrete points. Specification ¶ 0026.

Facts Related to Appellant's Disclosure

02. When a pinpoint inquiry is sent, the carrier ascertains a pinpoint location of the shipment between checkpoints. This may be done, with a global positioning satellite (GPS) device, and then the carrier can plot the GPS coordinates on a map and present the map to the user. Specification ¶ 0022.

03. The user clicks on the pinpoint symbol to actually cause the carrier to find out where the shipment is located between checkpoints. Specification ¶ 0024.

Facts Related to the Prior Art

Williams

04. Williams is directed to providing enterprises with online, multi-parcel, multi-carrier, multi-service enterprise parcel shipping management. Williams ¶ 0017.

05. Williams shows exemplary screen shots of entering shipping information. Several fields are for entry of "shipment" information, such as number of packages in shipment and delivery

address for shipment. Other fields include those for selection of the priority of shipment and carrier. Williams 101, 110, and 120.[3]

06. When a Shipper ships a package using Williams, one or more of the System's Servers create a new System tracking number. When a new System tracking number is created, one of the System's Database Servers adds a new package record with the newly created System tracking number to a Package Table. Williams ¶ 0539.

07. In one embodiment, Williams' Server will track the package using the Carrier's Internet tracking routine. Williams ¶ 0564. If the Carrier returns a valid tracking response, the Server updates the package status in the Server Database with the tracking response and returns the detailed package information to the Web Client of the requesting user/Shipper. Williams ¶ 0565.

08. Williams sends an e-mail notifying that a package has been sent. The User can enter a message or the System sends a standard message. Williams ¶ 0258 and 497-498. One of ordinary skill understood that an automated loading of e-mail by a system process rather than by a user occurred in background processing, since the user was not involved.

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[3] Although these pages in Williams contain graphic images, these pages are not part of the drawing section of Williams.

ANALYSIS

Claims 1-3 and 5-20 rejected under 35 U.S.C. § 102(b) as anticipated by Williams.

Claim 1 is the parent to claims 2, 3, and 5. Claim 1 recites receiving the requested pinpoint location of the shipment to the computer screen. The Appellant argues that Williams does not describe this. Appeal Br. 9-11. The Appellant contends that the Specification makes it clear that pinpoint information is positional information between checkpoints. We agree. FF 01 - 03. We also find that independent claim 13 and its dependent claims 14-16 contain a similar limitation.

The Examiner has not made any findings that Williams describes such positional information. The Examiner found that Williams described providing detailed information. Ans. 8. The Examiner made no findings that the detailed information in Williams was positional pinpoint information. Therefore, we will not sustain the rejection of these claims 1-3, 5, and 13-16.

Claim 6 is the parent to claims 7-12 and 17-20. Claim 6 recites receiving a type of shipment selection. The Examiner found that Williams showed examples of this at Williams 101, 110, and 120, which show exemplary screen shots with fields for "shipment" data. The Appellant argues that the activity in Williams is pre-shipment activity. Appeal Br. 12. This is a distinction without a difference. The claim requires "receiving a type of shipment selection." The claim does not specify when the receipt occurs, and certainly does not preclude information regarding prospective

shipments. Information about a shipment prior to the actual movement of a package still provides information about that shipment.

Claim 11, in combination with its parent claims 6 and 8, requires replacing or modifying a file that includes markup language and that includes at least one link to shipment tracking information, and that modification be implemented at least partly by the carrier or by the additional carrier. The Examiner found that Williams described this on page 30 in paragraphs 539-541 and 544. Ans. 6. The Appellant contends Williams' system server performs the modification rather than a carrier. Appeal Br. 12. Williams at paragraph 0539 shows that both the Examiner and Appellant are correct. FF 06. The modification occurs on a system server, but based on the action of the carrier. Thus, the requirement of claim 11 is met.

Claim 19 requires that the program stored in the user device displays a location message when a delivery vehicle is a first distance from a delivery location associated with the shipment. The Examiner found that Williams described this at paragraph 0565. Ans. 6-7. The Appellant contends this is not shown. Ans. 12. This portion of Williams describes updating tracking information using the Carrier's Internet tracking routine. The Server updates the package status in the Server Database with the tracking response when tracking information is received. As tracking information is received when various checkpoints are reached, and each checkpoint is a delivery location associated with the shipment, Williams' user device displays a location message when a delivery vehicle is a first distance (zero) from a delivery location associated with the shipment.

Claim 20 requires that the program stored in the user device is loaded as a background process after the status indication changes. The Examiner found that Williams described this in paragraphs 0258 and 495-497 with Fig. 27. Ans. 7. The Appellant contends this is not shown. Ans. 12. Williams describes loading an e-mail message in background to notify of shipment information. FF 08.

None of the remaining claims 7-10, 12, 17, and 18 depending from claim 6 are separately argued.

Claim 4 rejected under 35 U.S.C. § 103(a) as unpatentable over Williams and Bednarek.

Claim 4 depends from claim 1 and Bednarek does not remedy the deficiency in Williams. Thus, the rejection of claim 4 also fails to have a prima facie case.

CONCLUSIONS OF LAW

Rejecting claims 1-3, 5, and 13-16 under 35 U.S.C. § 102(b) as anticipated by Williams is in error.

Rejecting claims 6-12 and 17-20 under 35 U.S.C. § 102(b) as anticipated by Williams is not in error.

Rejecting claim 4 under 35 U.S.C. § 103(a) as unpatentable over Williams and Bednarek is in error.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1-3, 5, and 13-16 under 35 U.S.C. § 102(b) as anticipated by Williams is not sustained.
- The rejection of claims 6-12 and 17-20 under 35 U.S.C. § 102(b) as anticipated by Williams is sustained.
- The rejection of claim 4 under 35 U.S.C. § 103(a) as unpatentable over Williams and Bednarek is not sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

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